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September 2, 2015

VIA E-MAIL

The Honorable Paul A. Engelmayer
United States District Court for the Southern
District of New York
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007
EngelmayerNYSDChambers@nysd.uscourts.gov

Re: *Paragon Pet Products Europe B.V. v. Mars, Incorporated*, Case No. 15-cv-5520 (PAE)

Dear Judge Engelmayer:

We write on behalf of Defendant Mars, Incorporated (“Mars”) with regard to its Reply in Support of the Motion to Dismiss (the “Reply”). Pursuant to the Court’s Individual Rule and Practice 4.B, Mars requests permission to file under seal portions of the Reply, which is submitted with highlighting of the words and phrases proposed to be redacted. Pursuant to Individual Rule and Practice 1.A and 4.B, we transmit the Reply by e-mail and simultaneously are serving Plaintiff’s counsel with the unredacted Reply by copying them on that e-mail.

Mars requests permission to redact and file under seal the highlighted portions of the Reply because those selections discuss or reflect the contents of Exhibits 14, 15, 16, or 17 to the Declaration of Emma L. Baratta, submitted in connection with Plaintiff’s opposition to the motion to dismiss. Those exhibits were submitted in full redacted form by Plaintiff. *See* August 26, 2015 Letter to the Court from James W. Dabney [Dkt. #57]. Moreover, those documents have not been produced in this case; instead, they were produced by The Nutro Company (“Nutra”) to Paragon Pet Products USA, Inc. in the Tennessee Action (*The Nutro Company v. Paragon Pet Products USA, Inc. et al.*, Case No. 13-cv-1232 (M.D. Tenn.)), and designated Confidential, or marked “Restricted Confidential – Outside Counsel Only,” pursuant to the protective order entered by the Court in that action. The Plaintiff here—Paragon Pet Products Europe B.V., by and through its counsel, obtained those documents in violation of the Tennessee protective order. *See* Decl. of Katherine M. Turner in Supp. of Reply in Supp. of Mot. to Dismiss, Exs. 2, 4, 5. It now seeks to use them in this action in further violation of that protective order. *See id.* Mars seeks protection of those documents from public disclosure in this action in recognition of the protective order in the Tennessee Action and Nutro’s designation of the documents as confidential pursuant to that protective order. Moreover, the documents

WILLIAMS & CONNOLLY LLP

The Honorable Paul A. Engelmayer

September 2, 2015

Page 2

contain “trade secret or other confidential research, development, or commercial information” that is subject to protection under Federal Rule of Civil Procedure 26(c)(1)(G).

In addition, Mars requests permission to redact and file under seal the highlighted portions of the Reply discussing or reflecting the contents of Exhibits 8 to the Declaration of Emma L. Baratta. That document is an e-mail string, produced by Mars in this litigation and marked confidential pursuant to the procedures set forth at the July 28 hearing. Exhibit 8—which Plaintiff submitted in redacted form—reflects confidential research, development, and commercial information concerning the Veterinary Claims Studies that Nutro commissioned Trone Brand Energy to conduct, for the purpose of testing certain claims regarding various Greenies products. It is therefore subject to protection under Rule 26(c)(1)(G).

For the foregoing reasons, Mars respectfully requests (1) permission to redact the words and phrases highlighted in its attached Reply and to file such redacted documents on ECF; and (2) sealing of the unredacted versions of the Reply.

Respectfully submitted,



Katherine M. Turner

cc: James W. Dabney, Esq.; George A. Tsougarakis, Esq.; Emma L. Baratta, Esq.; Natasha Reed, Esq.; Nathaniel Fintz, Esq.